County Court Rules with respect to the time of delivery of summons to the bailiff was obligatory, and not merely directory, and therefore that the judge ought not to have tried the case. Grove, J., used the following words, which so far as I am aware have never since been disapproved of and which to my mind conclude the matter :—

"In construing Acts of Parliament, provisions which appear on the face of them obligatory, cannot, without strong reasons given, be held only directory. The rule is, that provisions with respect to time are always obligatory unless a power of extending the time is given to the Court, and there is no such power here."

In the rules with which I am concerned in the present case there is no power to extend the time mentioned in Rule 5(3). I must therefore hold that that rule is obligatory, that is, that it amounts to a condition precedent and as it has not been complied with the appeals have in effect become a nullity and cannot therefore be proceeded with. There will be judgment accordingly.

The order will be that the appeals are struck out and that the appellants in each case is condemned in costs.

Order accordingly.

Solicitors for respondents No. 1 : *Lim Lim & Onn.*

ENG SONG HAI v. PUBLIC PROSECUTOR.

[A. Cr. J. (Bellamy, J.) December 19, 1953]

[Malacca — Criminal Appeal No. 14 of 1953]

Dangerous Drugs Ordinance, 1952 — Whether evidence of delivery of Chemist's report is necessary where accused had pleaded guilty to the charge — Sentence — Criminal Procedure Code s. 427(1).

This was an appeal against the conviction and sentence of the appellant for possession of prepared opium. At the trial the appellant pleaded guilty. On appeal it was argued that the conviction was bad as there was no evidence that a copy of the Chemist's report had been delivered to the appellant as required by section 427(1) of the Criminal Procedure Code.

Held: (1) as the appellant had pleaded guilty there was no question of the prosecution proving their case and therefore it was not necessary for the learned Magistrate to have evidence that the provisions of section 427(1) of the Criminal Procedure Code had been complied with; (2) if the Court felt a sentence of imprisonment was necessary to effect a cure it should have the assistance of expert medical opinion in deciding how long was required in the case of the accused, and to impose a prison sentence to effect a cure without such medical evidence can only lead to possible injustice for an accused person.

Case referred to:—

(1) *Teo Heo Huat v. R.* (1949) M.L.J. 271.

CRIMINAL APPEAL.

W. H. Sault for the appellant.

L. A. Massie (Federal Counsel) for the respondent.

Bellamy, J. : — The appellant pleaded guilty to having in his possession 3 tahils and 9 hoons of prepared opium in contravention of section 9(1) (b) of the Dangerous Drugs Ordinance, 1952 and, having admitted the facts and a previous conviction for the same type of offence on the 18th March this year when he was bound over in the sum of $200 with one surety for a period of twelve months, he was sentenced to twelve months' imprisonment and a fine of $250 and, in default of payment of the fine, he was ordered to suffer a further term of three months' imprisonment. Originally this appeal was against sentence only, but at the hearing Mr. Sault applied for leave to appeal against the conviction on one ground only, namely, that there was no proof that a copy of the report of the Chemist, the original of which was given in evidence by the prosecution, had been delivered to the appellant not less than ten clear days before the commencement of the trial as required by section 427(1) of the Criminal Procedure Code of the Straits Settlements, which I granted.

In considering this point it is material to set out the course which the proceedings took before the Sessions Court. After his arrest on the 6th October, 1953, the appellant was produced before the Sessions Court on the 8th October. The charge was read and explained to him *ex abundanti cautela,* no plea was taken, the case being postponed to the 26th October to give the prosecution an opportunity of getting the articles found in the possession of the appellant analysed by a Government Chemist and of delivering a copy of the Chemist's report to the appellant as required by the section of the Criminal Procedure Code I have already mentioned. In the meantime there was a change of Presidents of the Sessions Court. On the 26th October, 1953, on the application of the prosecuting officer, the original charge against the appellant was amended to conform with the report of the Chemist and the appellant was charged with the charge as amended. To this charge he pleaded guilty. The prosecuting officer then narrated the facts to the Court, at the same time producing the report of the Chemist, the articles found in the appellant's possession and the record of the previous conviction of the appellant. The President thereupon convicted the appellant, and the appellant, admitting the previous conviction, was sentenced as I have stated. There was no proof before the Court that a copy of the Chemist's report had been delivered to the appellant as required by section 427(1) of the Criminal Procedure Code of the Straits Settlements, or at all, before the 26th October. It was argued that this failure was fatal. I do not think so. The appellant had pleaded guilty to the charge as amended, and no question then arose of the prosecution

proving their case. It only remained for the President to convict. Although the report and articles found in the possession of the appellant were produced at the trial and marked as exhibits, they were not "given in evidence": they were merely produced to the Court to assist the Court in reaching a proper decision as to sentence. This ground of appeal, therefore, fails.

As to sentence, the ground of appeal is that it is excessive. In the Court below the appellant stated in mitigation that he was an addict, and a fishmonger by occupation; that he felt that he could not work without opium, and that he had a wife and four children. The latter ground is, of course, entirely irrelevant and cannot afford any excuse or mitigation of an offence of this kind. In his grounds of decision the President took all these grounds into consideration and, having regard to the previous chance given to the appellant to mend his ways, imposed the sentence which he did "to try and cure the appellant". There was no expert medical evidence before the Court as to how long an abstention from the drug was necessary to cure the appellant, and the Court proceeded to sentence the appellant without its aid. I think this was a mistake: if the Court was of opinion that a term of imprisonment was called for to effect a cure, it should have had the assistance of expert medical opinion to assist it in deciding how long was required in the case of the appellant. To impose a prison sentence to effect a cure without such medical evidence can only, in my view, lead to possible injustice on an accused person. In *Teo Heo Huat v. Rex*[1] Murray-Aynsley, C.J. observed —

"This was the case of a chandu smoker. I consider that, generally speaking, severe punishment should be reserved for traffickers and others who make a living rather than for the actual smoker, who probably contracted the habit when it was quite legal. If it is possible, prison sentences should be avoided, and, if resorted to, it should be with a view to a possible cure."

I respectfully agree with these observations. The sentence imposed here is unquestionably a very heavy one, and in the circumstances I have outlined I think that it cannot be allowed to stand. I accordingly reduce it.

I confirm the conviction and allow the appeal as to sentence which is reduced to a fine of $250, in default of payment of the fine, three months' imprisonment.

Order accordingly.

Solicitors for the appellant: *W. H. Sault & Co.*

CHONG PENG v. PUBLIC PROSECUTOR.

[A. Cr. J. (Bellamy, J.) December 19, 1953]

[Malacca — Criminal Appeal No. 15 of 1953]

Dangerous Drugs Ordinance, 1952 — Possession of prepared opium — Delivery of copy of Chemist's report — Criminal Procedure Code, s. 427(1).

This was an appeal from the conviction of the appellant on a charge under section 9(2) of the Dangerous Drugs Ordinance, 1952. It appeared that there was no evidence before the trial Court to show that the copy of the Chemist's report had been delivered to the accused as required under the proviso to section 427(1) of the Criminal Procedure Code.

Held: to render the report of the Chemist admissible in evidence the prosecution must first satisfy the Court by oral evidence that the provisions of the proviso to section 427(1) of the Criminal Procedure Code had been complied with, that is to say, that a copy thereof has been delivered to the accused within the time stipulated in the proviso and until the prosecution has done this the report cannot be received in evidence.

Cases referred to:—

(1) *Goh Tong v. Public Prosecutor* (1953) M.L.J. 251.

(2) *Public Prosecutor v. Tay Tuan* (1953) M.L.J. 20.

(3) *Oh Eng Thye v. Public Prosecutor* (1954) M.L.J. 1.

CRIMINAL APPEAL.

C. S. Jayaswal for the appellant.

L. A. Massie (Federal Counsel) for the respondent.

Bellamy, J.: — At the conclusion of the arguments I allowed this appeal, and I now give my reasons for so doing.

The appellant appeals against his conviction and sentence on a charge:—

"That you on 9.9.53 at about 3.00 p.m. at Kesang Village in the District of Jasin were found to be in possession of 80 leaf packets of prepared opium and that you have thereby committed an offence under section 9(1)(b) and punishable under section 9(2) of the Dangerous Drugs Ordinance, 1952."

There are four grounds of appeal:—

(1) "That the learned President erred in law in holding that the trial of your petitioner did not commence on the 11th day of September, 1953 when the charge was explained, your petitioner 'Claimed Trial' and bail was fixed by the trial Court (see at the back of the Charge Sheet) and therefore the learned President should not have admitted the Chemist's Report Exhibit P. 3 in evidence.

(2) That there was no other evidence to prove that the 80 leaf packets Exhibit P. 1 was prepared opium and the learned President should have held that the charge was not proved against your petitioner.

(3) That the learned President misdirected himself in law as to possession which was not proved to be exclusively by your petitioner.